

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 14-85-0236

Parcel No. 09-23-300-305

Dickson & Luann Jensen,

Appellant,

v.

Story County Board of Review,

Appellee.

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on January 20, 2016. Appellants Dickson and Luann Jensen were represented by attorney Bruce Baker of Nyemaster Goode, PC, Des Moines. The Story County Board of Review was represented by attorney Brett Ryan of Watson & Ryan, PLC, Council Bluffs.

Dickson and Luann Jensen are the owners of property located at 600 Timber Creek Drive, Ames. The property was classified residential and assessed at \$1,625,600, allocated as \$571,500 in land value, \$1,054,100 in improvement value for the January 1, 2014, assessment. (Ex. 6). The Jensens protested to the Board of Review claiming the property was inequitably assessed, assessed for more than authorized by law, and misclassified under Iowa Code sections 441.37(1)(a)(1)(a-c). (Ex. 7). The Board of Review denied the protest.

The Jensens then appealed to this Board on the over assessment and misclassification claims. They assert the property should be classified as agricultural realty and its correct value is \$865,300, which was its previous assessment with an agricultural classification.

Findings of Fact

The subject property is a 33.08-acre parcel of land. It is improved with a two-story dwelling with 7257 total square feet of living area; a full walkout basement with 2606 square feet of living-quarters finish; three patios; an open-frame porch; a screened porch; and a 1856 square-foot attached garage constructed in 1996.

The property is also improved by a pool, pool decking, sheds, and a 9000 square-foot steel utility building built in 2001. (Ex. I). Testimony indicated a basketball court occupies one-half of the building; and the remainder is used to store various personal vehicles and some equipment Dickson Jensen characterized as agricultural.

An adjoining 19.35-acre parcel owned and developed by the Jensens is known as the Iowa State University (ISU) Golf Performance Center (the practice facility). Among other things, the practice facility includes fairways, bunkers, and greens that are leased to and used by ISU's golf teams. The parties do not dispute, and the evidence clearly shows, that the practice facility extends onto the northeastern portion of the subject property. (Ex. L).

The Jensens called three witnesses: Erik Charter, Controller of the Jensen Group; Chad Wilson, employee of Jensen Golf; and Dickson Jensen.

All three witnesses provided a historical summary of the property. From their collective testimony, we find the subject property has been owned by the Jensens for some time. In approximately 1996, the Jensens built their current home on the property. From 1996 until 2012, the portion of the property the Jensens now refer to as the sod farm was row cropped in beans or corn. Further, from 1996 until the present, two other areas had been cropped from time to time.

In 2012, construction for the practice facility on the adjoining parcel started and was completed later that year. The practice facility has been leased to ISU. The practice facility lease provides that the lease payments go directly to the lender, which will result in recapturing the cost of the facility over a ten-year period. In addition, the lease states that the Jensens' business, Jensen Golf LC, would provide maintenance services at the practice facility. In 2013, the Jensens constructed the sod farm on the northern area of the subject property, which had formerly been used for row cropping.

The sod farm was intentionally designed to continue the aesthetic appearance of the practice facility and therefore resembles a golf course. The witnesses acknowledged that ISU's use of the practice facility spills over onto approximately two-acres on the subject property's east side.

Erik Charter's testimony explained his familiarity with the Jensens' numerous business entities. Charter, a certified public accountant, is responsible for human resources, accounting, and tax returns for the Jensens' business entities and their personal holdings. The business entities mainly own rental units, golf courses, and farming properties.

Charter testified regarding the increase in the subject's dwelling assessment from 2013 to 2014. (Ex. 7 – 004). He compared the subject's assessment to other properties in Story County assessed for more than \$1 million and stated that the subject's assessment increased more than these other properties. Charter believes the large increase in the dwelling assessment is not justified. Ultimately we find that the Jensens have not established Charter as a disinterested witness with demonstrated expertise in the valuation of property and we give his valuation testimony no weight.

To support their claim for agricultural classification, the Jensens' Board of Review petition indicated that soybeans were planted on the property in 2013 and harvested. (Ex. 7-002). The 2013 Harvest Record shows 85 bushels were harvested in November 2013 from 3.508-acres. (Exhibit 7-006 thru 009). At \$10 per bushel, this would have resulted in income of approximately \$800 in 2013.¹ There is not a corresponding 2014 Harvest Record for the subject property detailing any crop-based production.

The 2014 accounting also shows \$312 from the sale of bentgrass sod and the sale of \$1750 worth of turf type tall fescue on December 31, 2014. We note the sod and fescue were sold to a Jensen-owned golf course and a Jensen-owned real estate development. Charter testified there was approximately \$18,000 in costs for the sod operation in 2014, all paid to Jensen Golf L.C. Given the expenses, the sod operation suffered a loss of roughly \$16,000 in 2014.

¹ The 2014 Farming Income & Expenses shows \$9.46 value per bushel of soybeans and generally substantiates Charter's testimony regarding the per bushel value of beans. (Ex. 8-001).

Charter also testified to the farm income reported on the Jensens' personal income tax returns from 2010 to 2014. We note the only income tax information submitted as evidence in this appeal is the Jensens' 2014 Form 1040 Schedule F that shows a profit from farming of \$31,915. This includes the Jensens' farming activities on properties other than the subject and thus is of minimal relevance to our determination of the subject parcel's use.

Charter further testified the sod grown on the subject is provided to the ISU practice facility, the Jensens' Harvester Golf Course, and other golf courses. Charter stated that no income was produced from sod prior to January 1, 2014, but sod was produced subsequent to that date. Charter testified total income to Jensen Golf LC in 2013 for maintenance of the practice facility was \$297,000.

In addition, Charter also examined agriculturally classified properties in an attempt to demonstrate that the subject should be classified agricultural. These comparisons do not assist this Board in examining the subject property's use and we give them no consideration.

Chad Wilson testified he manages the sod farm and practice facility and has a background in golf course management. He reported Jensen Golf LC maintains the ISU golf practice facility and planted sod on the subject property for fairway and greens maintenance. Wilson indicated it is the only bentgrass sod farm in Iowa. He explained the close proximity of the sod farm to the practice facility provides a benefit of immediate access for repair of sod damaged by disease, insects, animals, mechanical malfunctions, and winterkill. He estimates the current value of the bent grass in the sod farm is \$70,000 to \$80,000.

Wilson said it takes nine to twelve months to nurture and establish the sod. The grass for the fairways is grown on native soil and is mowed three times a week. The sod for greens is grown on sand and mowed one or two times daily. He reported 2014 was the first year sod was available for harvest. When questioned as to why the sod farm appears to be an extension of the practice facility's fairways and greens, he explained it was designed to be aesthetically pleasing and continue the look of the

practice facility onto the sod farm. (Ex. L). Similarly, sand traps were also included to add to the design's aesthetics.

Dickson Jensen owns the property and is a real estate developer. He testified regarding his experience rating golf courses for Golf Digest and his 1997 construction of the highly-rated 600-acre, Harvester Golf Course in central Iowa.

Jensen testified the fairways and greens on both parcels are irrigated, fertilized, mowed, and maintained. He estimates two acres of the subject property are used as part of the practice facility and roughly, 13-acres are the sod farm. He believes losing approximately \$500 annual row crop income from this portion of the parcel is well outweighed by the sod farm crop he estimates to be worth \$110,000.

Jensen also explained he has been transitioning some of the land to pasture and building a goat herd. He studied and considered a business plan for a "Goats to Go" type operation, whereby goats are hired out to clear off unwanted vegetation. However, he testified he has not decided whether the goats will be hired out or simply used on his existing operations.

Exhibit 11 demonstrates that Jensen Golf LC purchased goats in January and June of 2015. Jensen Golf LC also submitted an insurance claim for the loss of goats in November 2015. All of this activity occurred well after the January 1, 2014, assessment and is not relevant to our disposition of this appeal.

Jensen estimates the following uses for the 33.08-acre subject parcel. (Ex. 11).²
We have separately labeled each zone for ease of description.

Zone	Acres	Primary Use	Prior Use
1	4	Grass preparing for goat pasture	Bean/Corn
2	6	Grass for goat pasture	Beans/Corn
3	4	Residential Yard	Yard
4	2	Shelter Belt	Shelter Belt
5	4	Goat pasture	Beans/Corn
6	2	ISU Practice Facility Use	Beans/Corn
7	5	Sod Farm - Bent Grass	Row Crop
8	8	Sod Farm - Blue Grass	Row Crop

Jensen testified Zone 1, in the southeast corner of the property, had been used several times for beans and corn. However, when the neighbor built a pond, the area was re-sloped and planted in grasses. He indicated that in 2014 preparations were made for a goat herd and goats grazed on Zone 1 in 2015. Zone 2 contains roughly a 3.5-acre field that Jensen testified was in beans “last year.” Jensen stated preparations are being made to fence the entirety of the zone to accommodate goat grazing. He recalled that goats being temporarily kept in Zone 2 nearly drowned last year as a result of flooding. The residential improvements and the appurtenant yard account for the roughly 4 acres of Zone 3. Zone 4 is a 2-acre “shelter belt” consisting of evergreen trees that were planted in the late 1990s. Zone 5 is a 4-acre area formerly used for bean and corn crop and is now being prepared for a goat pasture. Zones 7 and 8 consist of roughly 13 acres that were used as row crop until 2012, when construction of the golf practice facility began. These zones now contain what Jensen refers to as the sod farm that has the appearance of a golf course.

Like Wilson and Charter, Jensen generally testified of the importance of this sod farm to the operations of the Harvester Golf Course, the practice facility, and to his other business enterprises. Jensen recalled an incidence of vandalism at the Harvester Golf Course that led to an immediate need for sod as one reason for his desire to establish a

² We note Jensen’s calculations total to \pm 35 acres, but the subject parcel is listed as having 33.08-acres. Jensen testified that his calculations are approximations and we treat them as such.

sod operation. The existence of the sod on this parcel provides a ready supply of sod if needed at the practice facility, the Harvester Golf Course, and the Jensens' real estate developments. The record indicates that the only sod thus harvested has been sold to and used at the practice facility and at a Jensen development project.

Jensen also believes the assessed land value is too high based upon his recent purchase of nearby land. No information about this sale was presented to this Board and we are unable to determine whether that property is comparable and if the sale accurately reflects this property's value. Jensen reports no improvements have been made to the dwelling; it has rural water, a septic system, uses propane, and is on a private street. He believes the dwelling is worth \$812,100. The Jensens have not; however, provided any evidence of market value, such as an appraisal, comparable sales, or any other recognized approach to valuation.

Story County Deputy Assessor Brent Balduf testified on behalf of the Board of Review. Balduf did a visual inspection of the property in November 2013 for the 2014 assessment. Balduf observed the former row crop area in the northern portion had been eliminated and the fairway from the practice facility continued onto the subject parcel. He also noted the row crop in the southern portion of the parcel had been eliminated. In his opinion, these constituted a change in use from the prior agricultural use of the parcel and justified changing the parcel classification to residential. Balduf testified that although he did not do an inspection of the interior of the buildings, a 10% functional obsolescence adjustment was made to the Jensens' dwelling because of its over 7200 square-foot size.

Balduf explained the increase in the Jensens' assessment was the result of a county-wide rural residential revaluation based on sales data, the change in classification to residential, and the elimination of the agricultural factor to the 9000 square-foot steel utility building on the parcel. He believes the land was under-assessed previously. We note that the construction quality grade of the dwelling had been changed from high quality (2+10) to executive quality (E-5) in the 2014 assessment.

Balduf testified he determines agricultural classification based on whether a property's agricultural use is primarily and substantially for intended profit. Balduf testified that a particular sod farm could be classified agricultural or commercial, depending on the circumstances and the assessor's judgment. In his opinion, the Jensens' property is not used primarily for an agricultural purpose for intended profit and does not qualify for agricultural classification.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case.

§ 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Although the Jensens claim the property is over assessed under Iowa Code section 441.37(1)(a)(1)(b), they have not offered any evidence of the subject's correct fair market value. Evidence of the subject property's fair market value is necessary to prevail on an overassessment claim. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Because the Jensens have not provided any independent evidence of the property's fair market value, we find they have not shown the property is over assessed.

Now we turn to the Jensens' misclassification claim under Iowa Code section 441.37(1)(a)(1)(c). The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code Ch. 701-71.1. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.* Boards of Review, as well as assessors, are required

to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property, except as provided for in paragraph 71.1(5) “b.” Iowa Admin. r. 701-71.1(1).

The Jensens assert their property should be classified agricultural. By administrative rule 71.1(3) agricultural property, in pertinent part, is:

Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph “a” or “b” of this subrule. . . .

With these rules in mind, we examine the potential agricultural uses of the property and weigh them against the undisputed residential use.³

Goats

We find the Jensens’ post-January 1, 2014, attempts to establish a goatherd do not qualify as an agricultural use being done in good faith with an intent to profit.

³ Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation containing fewer than three dwelling units, as that term is defined in subparagraph 71.1(5)“a”(5), including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. “Used in conjunction with” means that the structure or improvement is located on the same parcel, on contiguous parcels, or on a parcel directly across a street or alley as the building or structure containing the dwelling and when marketed for sale would be sold as a unit. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Iowa Admin. R. 701-71.1(4).

Dickson Jensen's testimony indicated he has not decided whether the goats will be hired out or simply used on his existing operations. The lack of any plan displays an ambiguity about whether the goats are intended to generate any revenue whatsoever. In addition, the testimony and evidence indicates the introduction of goats on the property occurred after the relevant assessment date.

Shelter Belt

Despite the Jensens' belief that the 2-acre shelter belt should be considered an agricultural use, we find no indication that these trees are being raised with an intent to profit. Instead, the trees exist to shelter the residential improvements and yard and have been doing so for the better part of two decades.

Corn/Beans

Given the aerial photographs and testimony, it is obvious portions of the property were previously used for row crop farming. Construction of the golf practice facility and sod farm/golf course has since limited row crop farming on the property. In 2013, the property produced a total of 85 bushels of beans worth approximately \$800 from roughly 3.5-acres. There was no evidence introduced indicating the property has produced any corn or beans since the 2013 harvest. While we find this row crop production was being done in good faith with an intent to profit, this use has effectively been abandoned and now ceases to take place on the parcel during the relevant time at issue.

Sod Farm/Golf Course

The Jensens indicate that approximately 12.5-acres of the property consist of a sod farm that has the appearance of a golf course. The testimony demonstrated that 2-acres of this 12.5-acre area are used by golfers at the practice facility. Even if we were to conclude that the 10.5-acre portion of the sod farm qualified as an agricultural use under rule 701-71.1(3), we would be unable to conclude this property's primary use is

agricultural because of our prior findings that the other uses of this 33-acre property do not qualify as an agricultural use being done in good faith with an intent to profit.

As it happens, we also find that the sod farm does not qualify as an agricultural use being done in good faith with an intent to profit. In particular, we are not convinced the sod farm is being operated toward an intent to profit from the agricultural use. While the irregular shape of the sodded areas and presence of sand traps conform to the practice facility and maximize their aesthetics, it diminishes the utility and profitability of the sod production area. Because of the significant costs and time needed to maintain the sod farm in conformance with the aesthetic requirements of the golf practice facility, it is unclear whether this sod farm could ever be operated profitably. This is demonstrated by the fact that the 2014 income and expenses show a \$16,000 loss from the sod farm. Even though the testimony suggested that if the entirety of the sod farm was harvested it would have a value somewhere near \$100,000, the evidence indicates that so far the Jensens have only harvested 7400 square-feet – an area smaller than their 9000 square foot outbuilding.

Further, all of the Jensens' witnesses testified about the importance of this sod farm to the Jensens' other business operations. This is demonstrated by the fact that the only purchasers of this sod have been the Jensens' golf course and real estate developments. Because of this testimony and the questionable profitability of this venture, it appears that the main purpose of operating this sod farm is to benefit the Jensens' other commercial enterprises. That is to say, this sod farm is not being operated because of its own independent value as an agricultural use. In the absence of the Jensens' other commercial ventures, it would not be economically feasible to continue to operate this sod farm in the same manner. This leads us to question whether this sod farm is being operated in good faith with an intent to profit or merely as a pretense to obtain the preferred agricultural classification and simultaneously benefit the Jensens' other business entities.

We find the agricultural use of the subject parcel, at the time of the 2014 assessment, was incidental and the parcel should remain residentially classified. We find the Jensens have not met their burden of demonstrating the subject property is

being primarily and principally used in good faith for agricultural purposes with an intent to profit. Therefore, we conclude they have not shown that the property is misclassified.

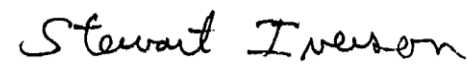
Order


IT IS THEREFORE ORDERED that the Story County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 14th day of March, 2016.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:

Bruce Baker

Brett Ryan